IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SPECIAL JURISDICTION ORIGINAL SIDE

CHARTERED ACCOUNTANT REFERENCE NO. 3 OF 2000

In the matter of the Council of the
Institute of Chartered Accountants
of India, Indraprastha Marg,
New Delhi .. Petitioner

vs.

Shri K. N. Kanodia,FCA,
M/s. Kamal & Associates,
Chartered Accountants,
Gandhi Mansion,
3rd floor, Bomanji Master St.,
Bombay. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S.Srikrishna i/b. M/s.Kanga & Co. for the petitioner.

Mr. S. S. Joshi i/b. Mr. J. K. Majithia for the Respondent.

Mr. U. T. Yadav with Mr. S. S. Pakale for Union of India.

CORAM : R.M. LODHA &
J. P. DEVADHAR, JJ.

Date : 12th August 2004

ORAL JUDGMENT (PER R.M. LODHA,J.)

Shri K. N. Kanodia, the respondent herein is a Chartered Accountant and member of the Institute of Chartered Accountants of India. A

complaint of `other misconduct' was made against the respondent before the Institute of Chartered Accountants of India by the Department of Customs, Government of India, through Shri S.D. Majumdar, the then Additional Collector of Customs, Bombay (for short, `the complainant').

2. The essence of the charge against the respondent reads thus:

> " While investigating into cases of some fraudulent imports and clearances, the Complainant's Department had come across a case of one Shri Pramod V. Mehta, Chartered Accountant having issued false certificates to several parties viz. M/s. United Mechanical Works, M/s. Laxmi Engineering Works & others for past exports for monetary considerations, without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import licences, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several crores of rupees.
>
> In his statements dated 1st January, 1990, 2nd January, 1990 and 24th January, 1990 recorded under Section 108 of the customs Act, 1961, the said Shri Pramod V. Mehta had confessed to the above and had also disclosed to have issued these certificates on the instance of another Chartered Accountant, Shri Kamal N. Kanodia, i.e. The Respondent. In his statements recorded under

> Section 108 of the Customs Act, 1962, the Respondent had also confessed his role in this affair as well as the fact that he also got a share in this deal of issuing false certificates.
>
> According to the complainant-Department, the above act of the Respondent would attract action against him under clauses (5), (10) & (11) of Part I of the First Schedule, clause (7) & (8) of Part I and clause (i) of Part II of the Second Schedule to the Chartered Accountants Act, 1949."

3. The Institute of Chartered Accountants of India sent a copy of the complaint to the respondent. The respondent submitted his reply which reads thus:

> "At the outset I deny each and every allegation and insinuation contained in the said complaint. It is relevant to note that the certificates have not been issued by me nor have I been instrumental in getting the certificate issued by Mr. Pramod V.Mehta, Chartered Accountant.
>
> The fact of the matter is that the party by name Mr. M.L. Gupta, had come to me for some certification work, As I was busy at the relevant time with some of my other professional and time bound work, I politely refused to undertake the job. I have mentioned the name of Shri Pramod V. Mehta, Chartered Accountant to him and advised him to approach him with a request

> for issue of the certificate. This apart I have not played any other role in the issue of such certificates. This would be confirmed with the truthful statement given by me under summon on 18.01.1990, I crave leave to refer to and rely upon the said statement in my defence, as this is my first, voluntary and truthful statement.
>
> Subsequently, I was again summoned on 22.01.1990 and I was showed the statement of Shri Pramod V. Mehta, Chartered Accountant. My further statement was recorded to corroborate the statement of Shri Mehta, which statement is not a truthful and voluntary as it is far from truth.
>
> I may further add that the matter is still subjudice with the Collector of Customs, Bombay and request you to keep the matter in abeyance till the matter attains finality in law."

4. The complainant submitted the rejoinder.

5. The Council of the Institute of Chartered Accountants of India was prima facie of the opinion that the respondent was guilty of `other misconduct' and, accordingly, decided to refer the case to the disciplinary committee for inquiry.

6. Before the disciplinary committee the complainant as well as the respondent produced diverse documents. Though the complainant did not examine any witness, the Council recorded the statement of Shri Pramod V. Mehta, Chartered Accountant, Shri Lukkad, Chartered Accountant and also examined the respondent. The committee was of the view that the respondent was guilty of `other misconduct' within the meaning of Section 22 read with section 21 of the Act of 1949 and forwarded its report to the Council. The Council accepted the finding of the disciplinary committee and recommended to this Court that the respondent be reprimanded.

7. We have heard Dr. Virendra Tulzapurkar, the learned senior counsel for the Institute of Chartered Accountants of India and Mr. S. S. Joshi, the learned counsel for the respondent.

8. The charge against the respondent is that he influenced and enticed one Shri Pramod V. Mehta, Chartered Accountant in issuing false certificates of consumption and past exports to several parties for monetary consideration.

9. It is not in dispute that in the investigation relating to some fraudulent import clearances, the statement of Shri Pramod V. Mehta, Chartered Accountant was recorded under Section 108 of the Customs Act, 1962. In his statement Shri Pramod V. Mehta stated that he issued the certificates to the parties on the basis of the information given by the present respondent. The statement of the present respondent under Section 108 of the customs Act was also recorded wherein he is said to have admitted that for the issuance of two certificates, he was paid Rs.6,000/-. Out of this he paid Rs.4,000/- to Shri Pramod V. Mehta and retained Rs.2,000/- for himself. As a matter of fact, the statement of Shri Pramod V. Mehta recorded under Section 108 of the Customs Act does not deserve much credence since he was found to have issued wrong certificates of consumption and past exports and, obviously, to save himself if he made a statement to rope in the present respondent, the statement of Shri Pramod V. Mehta either before the Customs authority under Section 108 or before the disciplinary committee has to be viewed with circumspection. It is true that the respondent is said to have admitted in his statement recorded under section 108 of the Customs Act, 1962 that for the issuance of two certificates he was paid Rs.6,000/-; out of which he paid Rs.4,000/- to Shri Pramod V. Mehta and retained Rs.2,000/- for himself, the fact of the matter is that before the disciplinary committee he

has stated that his statement under section 108 of the Customs Act before the Customs authorities was under duress and he was terrorised by the Customs authorities to give such statement. On overall consideration of the matter, the disciplinary committee by applying the principles of preponderance of probability held that the respondent was guilty of `other misconduct'. The said finding has been accepted by the Council. Though the complainant did not examine himself before the disciplinary committee, on overall consideration of the matter, we are of the view that there was some involvement on the part of the respondent in the whole episode which led to the issuance of wrong certificates by Mr.Pramod V. Mehta and to that extent we hold the respondent guilty of `other misconduct'.

10. The Council by way of punishment has recommended that the name of the respondent be removed from the register of members for one month. We find it difficult to accept the recommendation of the Council. Applying the test of proportionality, looking to some involvement of the respondent that led to the issuance of false certificates by Shri Pramod V. Mehta, we are of the view that the order of reprimand shall meet the ends of justice. Afterall it cannot be overlooked that wrong certificates were issued by Shri Pramod V. Mehta, Chartered Accountant and not by the respondent.

11. We, accordingly, pass the following order:

(i) The respondent is held guilty of `other misconduct' within the meaning of Sections 21 and 22 of the Chartered Accountants Act, 1949.

(ii) The respondent is reprimanded.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)